United Nations E/C.19/2011/12

# Economic and Social Council

Distr.: General
10 March 2011

Original: English

**Permanent Forum on Indigenous Issues**
**Tenth session**
New York, 16-27 May 2011
Item 3 (a) of the provisional agenda*
**Follow-up to the recommendations of the Permanent Forum: economic and social development**

## Study on indigenous peoples and corporations to examine existing mechanisms and policies related to corporations and indigenous peoples and to identify good practices

**Submitted by the Special Rapporteurs**

*Summary*

At its seventh session, the Permanent Forum on Indigenous Issues appointed three of its members as Special Rapporteurs to conduct a study on indigenous peoples and corporations to examine existing mechanisms and policies concerning corporations and indigenous peoples and to identify good practices. At the eighth session, the mandate of the Special Rapporteurs was extended, and at the ninth session, in 2010, they presented conference room papers (see E/C.19/2010/9, para. 3). A select bibliography of key United Nations documents concerning the private sector and the rights of indigenous peoples was also presented (ibid., para. 6), with the recommendation to continue the mandate of the study. The present report sets out the key findings of the various studies.

* E/C.19/2011/1.

11-25851 (E) 240311

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# I. Introduction

1. The present study examines existing mechanisms and policies in relation to corporations and indigenous peoples and identifies examples of good practices. The relationship between corporations and indigenous peoples is an important and urgent issue because the scale of resource exploration and potential exploitation on indigenous peoples' lands and territories affects indigenous peoples and their communities. The number of transnational corporations from developed countries that engage in resource exploitation is rising. Corporations therefore need to consider applying international standards such as social responsibility and the rights of indigenous peoples in their projects.

2. Large-scale industrial projects involving natural resource exploration, which determines economic development, are elaborated and realized in nearly every State in the world. These projects affect indigenous peoples by reducing their traditional management systems, sacred places, pastures and hunting and fishing grounds, thereby undermining their economic, cultural and spiritual life and threatening the existence of many indigenous peoples.

3. The well-being and future of indigenous peoples depend directly on the policies and practices of States and of international institutions and organizations. They also depend on the realization of political and economic rights, the development of their human potential, the strengthening of traditional economies, environmental protection and the legal regulation of relations with corporations.

4. Unfortunately, the common practices of private corporations that exploit the hydrocarbon, mineral, forest, water, wind, agricultural and other resources within indigenous territories do not take indigenous peoples' rights into account. Instead, they ignore and even violate indigenous peoples' individual and collective rights, divesting them of their lands and natural resources.

5. There are a few cases of good practices that comply with international and national norms and are in line with the principles and norms of corporate social responsibility. There is still concern, however, because the codes of conduct are designed to focus on the interests and rights of the corporations, which use global normative frameworks to protect their interests and consolidate their rights within national legislation. This reflects the inclination of States to protect the interests of corporations investing in their countries.

6. There are already international instruments that protect indigenous peoples' rights to development. The United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization (ILO) Convention No. 169 direct States to recognize the inherent rights of indigenous peoples to their lands, resources and self-government and do not limit these rights to the spheres of traditional economy and culture. These instruments recommend that States cooperate with indigenous peoples and that they undertake genuine consultations with them regarding any project affecting their ancestral lands, territories and resources. States and the private sector must obtain the free, prior and informed consent of indigenous peoples in any planned projects, exercise good faith, and guarantee their full and effective participation and a share in the benefits arising from such projects.

## A. The relationship between indigenous peoples and their lands

7. Indigenous peoples' relationship with their lands and territories is profound; it constitutes a fundamental part of their identity and is deeply rooted in their culture and history, transcending the material to become a relationship that is spiritual and sacred in nature. For indigenous peoples, land is the source of all life. This relationship extends to, inter alia, their natural resources, bodies of water and forests and biodiversity. In the mindset of indigenous peoples, land and territory are "the vital space" and guarantee the existence of present and future generations.

8. Natural resources enable indigenous peoples to ensure a material foundation for their well-being,[1] which is understood to be a full, integral life based on their identity, dignity and wisdom in harmony with Mother Earth and the traditional knowledge systems of the peoples. It is a balanced life based on a world view of equality that incorporates human, ethical and holistic dimensions and a vision of human beings living in harmony with nature.

## B. The relationship among corporations, the State and indigenous peoples: general repercussions of corporate activities for indigenous peoples

9. Historically, indigenous peoples' relationship with corporations that operate on their lands and territories has been one of conflict; these entities have violated and ignored the individual and collective rights of the indigenous peoples, who have suffered the negative consequences of corporate practices in the extractive and energy industries. Negotiations between the two parties have been limited, with corporations usually being in a position of strength.

10. The inequalities and asymmetries in the relationship among indigenous peoples, States and the private sector have often been recognized when dealing with the issue of the exploitation of extractive resources. As previously stated, in many cases, States and their officials have favoured corporate interests to the detriment of indigenous peoples' interests, stating that this is in the national and public interest.

11. The achievement of equitable and mutually beneficial relations between indigenous peoples and corporations is based on recognition of the indigenous peoples' rights to their lands, territories and natural resources; the exercise of their right to self-determination; States' observance of, respect for and protection of those rights as provided for in international law and in national legal systems; and free, prior and informed consent, when considering the exploitation of resources.

12. The repercussions of transnational corporate activities for indigenous peoples' lands and territories include non-recognition of indigenous peoples' property rights in respect of their lands and the loss of actual ownership; eviction, displacement and forced migration, which affect not only their way of living but their culture and cultural heritage; the plundering of and violation of the right to use and exploit their natural resources; the destruction and contamination of the environment and its ecosystems; soil erosion, the reduction of flora and fauna and loss of biodiversity in their lands and territories; the constant pressure over their territories; and the loss of

[1] The notion of "well-being" is a translation of the expression *sumak kawsay* from the Kichwa language.

their natural resources for fishing, hunting, gathering, herding and other agricultural activities.

# II. International law and the policies of international institutions

13. In the past 20 years, there has been important progress in the development of legal normative frameworks in the international sphere with respect to the rights of indigenous peoples and their relationships with States. One such instrument is ILO Convention No. 169 (Indigenous and Tribal Peoples Convention, 1989), which is binding on the countries that have ratified it and incorporated it into their national legislation. At present, 19 countries have ratified the Convention, 15 of which are from Latin America. Briefly, the Convention recognizes indigenous peoples' right to their lands and territories; their social and religious values; the application of indigenous law; access to health services; employment and training on an equal footing; non-discrimination; and respect for cultures and ways of living. It also recognizes their right to apply their own models of development.

14. Other international legal instruments relevant to the rights of indigenous peoples include the International Convention on the Elimination of All Forms of Racial Discrimination, which contains norms for the defence of their rights; the Convention on the Rights of the Child, signed in 1989; and the Convention on Biological Diversity, in particular article 8 (j). Paragraph 20 of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in June 1993, is also of relevance.

## A. International law

15. Other international normative frameworks that could also affirm the rights of indigenous peoples include the Universal Declaration of Human Rights (1948); the Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107); the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the International Covenant on Economic, Social and Cultural Rights adopted by General Assembly resolution 2200 A (XXI) in December 1966; and the International Covenant on Civil and Political Rights, adopted by the same resolution, which entered into force in March 1976.

16. The United Nations Declaration on the Rights of Indigenous Peoples is a response to indigenous peoples' historical claim to a legal and political instrument that protects their human rights. The Declaration recognizes the political, territorial, economic, social and cultural rights of indigenous peoples and is a very important step toward the recognition, promotion and protection of indigenous peoples' rights and freedoms. It also constitutes a minimal framework of norms for indigenous peoples' survival, dignity and well-being.

17. Other legal normative instruments that promote and safeguard the rights of indigenous peoples include General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination, concerning indigenous peoples (fifty-first session, August 1997), which calls upon States parties to recognize and respect the indigenous peoples' distinct culture, history, language and way of life as an

enrichment of the State's cultural identity, and to promote its preservation; the Second International Decade of the World's Indigenous People (2005-2015), which calls upon Member States to increase their action and cooperation with indigenous peoples to achieve significant progress in the global improvement of their situation; the Universal Declaration on Cultural Diversity (2001), which highlights the importance of consolidating cultural diversity as an ethical imperative and the role of indigenous peoples therein; the working paper entitled "UNDP and indigenous peoples: a policy of engagement" (2001) establishing the United Nations Development Programme (UNDP) guidelines on the matter; the UNDP *Human Development Report 2004: Cultural liberty in today's diverse world*; and the World Health Organization (WHO) Traditional Medicine Strategy 2002-2005.

18. The report of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries of December 2005 (TD/B/COM.2/EM.17/3) alluded to the sustainability of business operations, which increasingly required attention to the long-term outcomes of those operations and to the relationship between corporations and the communities in which they operated. It also referred to the link between responsible business and corporate social responsibility.

19. In his third annual report to the Human Rights Council (A/HRC/15/37), the Special Rapporteur on the rights of indigenous peoples made reference to the issue of corporate responsibility with respect to indigenous peoples' rights within the framework of international standards and the expectations generated in the international community concerning that matter. He noted that there was a lack of awareness of indigenous peoples' rights which has led to dispossession, environmental contamination, forced displacement and permanent damage to their culture, spirituality and traditional knowledge. Corporate activities in indigenous territories were becoming increasingly frequent, and were causing serious social conflicts that sparked circles of violence and in turn resulted in new human rights violations. Indigenous peoples were not the only victims because social conflicts related to corporate activities in indigenous territories had a negative impact on the economic interests and the image of the corporations themselves and on the interests of the Governments concerned. It was the duty of corporations to respect human rights and the concept of due diligence as reflected in the United Nations Global Compact, the most important international initiative undertaken to date that guaranteed the adoption of social responsibility by businesses.

20. Within the Inter-American System, the work of the Inter-American Commission on Human Rights on the promotion, fostering and defence of the human rights of indigenous peoples is worth noting. In 1971, the Commission established that indigenous peoples had the right to special legal protection to counteract severe discrimination. It called on the States members of the Organization of American States (OAS) to implement and respect article 39 of the Inter-American Charter of Social Guarantees, adopted by the OAS General Assembly in 1948. In 1972, it issued the resolution entitled "Special protection for indigenous populations: action to combat racism and racial discrimination", which called on Member States to act with the greatest zeal to defend the human rights of indigenous peoples, who should not be subjected to any kind of discrimination.

21. The human rights organs of the Inter-American System (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights) play

an important role in the resolution of indigenous rights cases. Their decisions are binding on States members of OAS. Symbolic cases resolved by the Court include the case of the *Mayagna (Sumo) Awas Tingni Community versus the State of Nicaragua*, concerning the indigenous community's rights to their ancestral lands. Another land rights case resolved by the Court is of the *Yakye Axa Indigenous Community versus the State of Paraguay*. In both cases, the Court established that the States were obligated to provide effective protection that took into account the particularities, economic and social characteristics, and special situation of vulnerability of indigenous communities, as well as their common law, values and customs.

## B. Policies of the international financial institutions

22. A complementary element to the political normative frameworks on corporate social responsibility in the development of projects on indigenous peoples' lands and territories is found in the directives, policies and regulations of financial entities such as the World Bank, the International Finance Corporation, the Inter-American Development Bank and the Asian Development Bank. The World Bank has an operational policy[2] on indigenous peoples that states that for any proposed projects that affect indigenous peoples, the borrower is required to engage in the process of free, prior and informed consent and that the projects include measures to (a) avoid potentially adverse effects on the indigenous peoples' communities; or (b) when avoidance is not feasible, to minimize, mitigate or compensate for such effects. The World Bank recognizes that the identities and cultures of indigenous peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose them to different types of risks and levels of impacts from development projects. As a result, indigenous peoples' economic, social and legal status often limits their capacity to defend their interests and rights to lands, territories and other productive resources or restricts their ability to participate in and benefit from development.

23. The International Finance Corporation has had established policy and performance standards (for example, performance standard 7) since April 2006 to help corporations with activities on indigenous peoples' lands and territories to respect international norms and the fundamental rights of indigenous peoples. These standards concern, inter alia, the prevention of adverse effects of projects; disclosure, consultations and informed participation; the benefits of development; the impacts on indigenous peoples' lands; the relocation of indigenous peoples; and the use of cultural resources, knowledge, innovations or practices of indigenous peoples for commercial profit.

24. The Inter-American Development Bank has an operational policy targeting indigenous peoples, in addition to a strategy for indigenous development. Both were approved in February 2006 and arise from a recognition of "the needs, rights, demands and aspirations of indigenous peoples, which stem from their own world views".[3] The objectives of the policy are to support the development with identity of indigenous peoples, including strengthening their capacities for governance and to

[2] Operational policy and bank procedure 4.10 of July 2005.

[3] See Inter-American Development Bank operational policy on indigenous peoples and strategy for indigenous development.

safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects. The policy endeavours to support sociocultural development processes that are appropriate to the economy and governance of indigenous peoples, giving priority to territorial and cultural integrity, supporting a harmonious relationship with the environment and providing security in the face of vulnerability, while respecting the rights of indigenous peoples and individuals. It aspires to consolidate the conditions that enable indigenous peoples to exercise their right to participate effectively in determining their own political, economic, social and cultural future within the framework of participation in democratic systems and the construction of multicultural States.

25. In Asia, the Asian Development Bank has a policy aimed at benefiting indigenous peoples, which strives to: (a) recognize the indigenous peoples' situation of vulnerability; (b) offer opportunities; (c) prevent any adverse impacts of the projects that it funds; and (d) promote a development plan for indigenous peoples. Despite their policies, many of the projects funded by the four banking institutions that attempt to benefit indigenous peoples have been negative and counterproductive to the interests of indigenous peoples and have often contributed to violating their fundamental rights.

## III. National legislation: the application of relevant international law

26. State laws that implement international conventions and laws on indigenous peoples differ from country to country. For example, indigenous peoples' rights in the Russian Federation are outlined in different laws, including Federal Law No. 82-FZ on guarantees of the rights of numerically small indigenous peoples of the Russian Federation adopted in April 1999, Federal Law No. 104-FZ on the general principles of organizing communities of numerically small indigenous peoples of the North adopted in July 2000 and Federal Law No. 49-FZ on the territories of traditional natural resource use of numerically small indigenous peoples of the North, Siberia and Far East of the Russian Federation adopted in May 2001.[4] Legislation on the rights of the Russian Federation's small-numbered indigenous peoples was developed within the context of the country's political and economic reform, which itself was influenced by policies of foreign investors, and of the strengthening of social and environmental protection within policies covering oil and gas regions.

27. On the American continent, constitutional reforms in the last several years have acknowledged the political, economic, social and cultural rights of indigenous peoples. Countries such as the Plurinational State of Bolivia and Ecuador have promulgated new constitutional frameworks that recognize and guarantee the rights of indigenous peoples. Article 1 of the Constitution of the Plurinational State of Bolivia guarantees indigenous peoples' self-determination with respect to autonomy, self-government, culture, their institutions and their territories. The new Constitution of Ecuador also guarantees the existence of indigenous peoples and their collective rights to their identity and to the ownership of their communal lands.

[4] See http://www.barentsindigenous.org/-undrip-reflected-in-russian-legislation.4801602-111496.html.

It guarantees indigenous peoples the right to participate in the use, exploitation, administration and conservation of the renewable natural resources found on their lands; to free, prior and informed consultation and a share in the benefits that such projects generate; and to compensation for social, cultural and environmental damages caused.[5]

28. In Nicaragua, in addition to the constitutional changes of 1987, a regime of autonomy was established for the indigenous peoples of the Caribbean coast through the promulgation and implementation of the Autonomy Statute for the Atlantic Coastal Regions of Nicaragua, Law No. 28, and its corresponding by-law. This autonomy process has developed and strengthened over a 20-year period. Other legislation has recently been promulgated to complement certain aspects of the Statute, including the *Law on the communal property regime of the indigenous peoples and ethnic communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Coco, Bocay, Indio and Maiz Rivers* (Law No. 445), which was approved in December 2002 and provides for the organization of indigenous authorities in their territories and assigns to them competencies in respect of the territorial management and administration of natural resources.

29. A number of countries have carried out constitutional reforms or adopted legislation that recognizes indigenous peoples' individual and collective rights, including Argentina, Brazil, Colombia, Guatemala, Mexico, Panama, Paraguay, Peru and Venezuela (Bolivarian Republic of) (see E/CN.4/2006/78). In Canada, indigenous rights are enshrined in the Constitution. Legislative reforms embrace such diverse aspects as property rights in respect of their lands and territories, autonomy and self-government and the recognition of their common law in the regulation of internal relations. These reforms recognize the jurisdiction of the indigenous authorities according to their own law. In Cambodia, there are laws that recognize indigenous peoples' rights with respect to their lands and forest management. In 1954, Malaysia adopted the Aboriginal Peoples Act on the protection of indigenous groups known as "Orang Asli", and in the Philippines, the Indigenous Peoples' Rights Act of 1997 recognizes various rights.

30. On the African continent, only a few States have recognized the existence of indigenous peoples in their territories. The Constitution of Ethiopia mentions the unconditional right to the self-determination of each nation, nationality and peoples in Ethiopia. The laws of Cameroon and Uganda protect the rights of indigenous peoples. In Algeria, the 1996 Constitution recognizes the Amazigh dimension of the Algerian culture. The Namibian Constitution recognizes the indigenous Nama language. In South Africa, while indigenous peoples are not recognized as such, the Khoe and San peoples are mentioned in the 1996 Constitution, which protects the use of indigenous languages.

31. In the United States of America, American Indian law includes treaties and federal Indian law. Native American recognition almost always refers to the process of a tribe being recognized by the United States Federal Government or to a person being granted membership in a federally recognized tribe. There are 561 federally recognized tribal governments. The United States recognizes the right of these tribes to self-government and supports their tribal sovereignty and self-determination. The tribes possess the right to establish the legal requirements for membership; form

[5] See article 57, paras. 1, 4 and 5-7.

their own government; enforce laws (both civil and criminal); tax; license and regulate activities; zone; and exclude persons from tribal territories.

32. Until recently, the Australian legal framework did not recognize indigenous peoples' rights to land on the basis of traditional occupancy. During the 1970s, the Commonwealth and State Governments began legislating to return lands to indigenous communities and allow claims to other lands. In 1992, the High Court handed down the landmark *Mabo* decision, which rejected the discriminatory doctrine of *terra nullius* (vacant land). In response to the historic High Court decision, the Government enacted the Native Title Act in 1993. There is no provision in the Act for native title holders to veto mining on their land although it does provide for the right to negotiate under certain circumstances. The Act also allows certain future activities that will have minimal effect on native title to be excluded from the arrangements that give rights to negotiate to native title holders. This will be of special relevance and value in mineral exploration. Existing covenants and conditions in the pastoral lease will continue to apply and prevail over native rights. Valid pastoral leases can be renewed even if native title has survived the lease and the use of the land. The Act ensures that the existing rights of pastoral leaseholders are protected: should any invalidity be found because of native title, the lease will be validated.

33. With respect to mining and other natural resource exploitation on lands subject to native title claims, indigenous representative bodies have negotiated agreements that provide benefits for indigenous traditional owners. At the same time, indigenous rights are often inadvertently undermined because the terms of such agreements are kept secret; indigenous peoples often have limited time to negotiate; legal representation is often inadequate; and Government involvement does not always align with indigenous interests. In contrast to the 1993 Act, the 1998 Native Title Act Amendment Bill was drawn up without the consent of, or consultation with, indigenous people. The amendment wound back indigenous rights and, in some instances, resulted in the outright extinguishment of native title. At the same time, non-indigenous land interests secured windfall gains.

34. The relationship between Māori and the New Zealand Government is grounded in and by the Treaty of Waitangi and, while it is subject to ongoing debate in New Zealand, it does hold an important place in the country's legal framework. It also establishes partnerships between Māori and the Government. For example, separate seats have been set aside for Māori in Parliament, which guarantees their representation and enables them to influence decision-making at the national level. The duty to consult Māori people on issues that affect them is inherent in the Treaty; however, the duty to consult is not regarded as absolute. Even when consultations do take place, they are often not in accordance with traditional Māori decision-making processes.[6]

35. In 1979, Greenland was granted Home Rule from Denmark and in 2008, Greenland voted to transfer more power from the Danish Royal Government to the local Greenlandic government. In June 2009, Greenland assumed self-determination with responsibility for self-government of judicial affairs, policing and natural resources. Also, Greenlanders were recognized as a separate people under

[6] See the Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of Māori people in New Zealand, available from http://unsr.jamesanaya.org/country-reports/the-situation-of-maori-people-in-new-zealand-2011.

international law. Denmark maintains control of foreign affairs and defence matters. It upholds the annual block grant of 3.2 billion Danish kroner but as Greenland begins to collect revenues from its natural resources, the grant will gradually be diminished.

36. In Norway, Sweden, Finland and the Russian Kola Peninsula, the Sami people are divided by the formal boundaries of the four States. However, they continue to exist as one people united by cultural and linguistic bonds and a common identity and have traditionally inhabited a territory called Sápmi, which spans the northern parts of these countries. The Sami Parliamentary Council, formed in 2000, is composed of the Sami parliaments of Norway, Sweden and Finland and includes the permanent participation of Sami from the Russian Federation. The Council is mandated to deal with cross-border issues affecting the Sami people, including language, education, research and economic development, and to coordinate the Sami voice at the international level. The Sami parliaments are the principle vehicles for Sami self-determination in Norway, Sweden and Finland, and they represent an important model for indigenous self-governance and participation in decision-making. Also, the Nordic States have gradually developed some protection for Sami lands and reindeer-herding activities and today, significant tracts of land are continuously used for reindeer herding.[7]

## IV. Approaches, organization and strategies of the indigenous peoples vis-à-vis States and corporations

37. Development projects that exploit the natural resources on indigenous peoples' lands and territories often produce conflicting positions. This situation exists even in cases where indigenous peoples participate, and can often divide communities between those who support the projects and those who oppose them. Indigenous peoples are conscious of their disadvantaged position when dealing with the interests of States and corporations. Indigenous peoples are often ignored because their aspirations, rights and interests are not taken into account and they are denied their right to effective participation in the political, social, economic, cultural and environmental issues that concern them.

38. In the past few decades, indigenous peoples have developed their own agenda in response to their own realities by identifying programme areas, lines of action and minimal collaboration and coordination schemes. These lines of action refer to relevant issues such as defending their territories against mega-projects; protecting their important sites and areas and biodiversity; dealing with climate change; considering the application, monitoring and reform of international and national legal frameworks; strengthening networks and alliances with compatible sectors; cultural revitalization and strengthening and indigenous spirituality; defending their cultural and intellectual heritage; and self-determination. Indigenous peoples have also developed different forms of protest against: (a) policies formulated and implemented by States; (b) changes in the legal frameworks that regulate their relationship with States or in the legal frameworks that grant rights over natural

[7] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, available from http://unsr.jamesanaya.org/docs/countries/2011_report_sami_advance_version_en.pdf.

resources in indigenous lands and territories; and (c) the execution of projects and mega-projects that affect their interests, resources, culture and lives.

## V. Good corporate practices

39. In his third annual report, the Special Rapporteur on the rights of indigenous peoples indicated that the international community expects corporations to take a proactive role in identifying and determining how indigenous peoples are affected by corporate activities. In addition, the international community expects corporations to respect indigenous peoples' rights by promoting rather than hindering the fulfilment of State obligations to protect those rights (see A/HRC/15/37). However, it is difficult to establish the extent to which this has occurred. He further stated that corporate activity might become a key factor in indigenous peoples' development when they themselves could control such activity in the exercise of their rights to autonomy and self-government, and implied that a corporate approach based on respect for indigenous rights required that they should receive a share of the benefits (see A/HRC/12/34/Add.5, para. 40).

40. The norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights provide that within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect for and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups (see E/CN.4/Sub.2/2003/12/Rev.2). The United Nations Global Compact, whose purpose is to convince corporations to assume and commit to the fulfilment of their social responsibility, consists of 10 principles aimed at four spheres of influence, namely human rights, labour, environment and anti-corruption. Principles 1 and 2 of the Global Compact state that corporations should support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure that they are not complicit in human rights abuses (see E/CN.4/Sub.2/2003/12/Rev.2). Although many business enterprises and transnational corporations have adhered to the Global Compact, there are very few practical cases that confirm the fulfilment of this corporate responsibility.

41. In the report of the Office of the United Nations High Commissioner for Human Rights on the International workshop on natural resource companies, indigenous peoples and human rights: setting a framework for consultation, benefit-sharing and dispute resolution, held in Moscow, in 2008 (see A/HRC/EMRIP/2009/5), it was suggested that the United Nations Declaration on the Rights of Indigenous Peoples could be used to orient negotiations among States, the private sector and indigenous peoples on the basis of recognized human rights standards for indigenous peoples; the report also pointed out that various corporations, including those participating in the United Nations Global Compact, had developed relevant guidelines and practices ... aimed at improving their relations with indigenous peoples and local communities. The report further stated that the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises had proposed a policy framework to "protect, respect and remedy". Specifically, the framework distinguished among three types of duties: the State duty to protect, the corporate

responsibility to respect and the shared responsibility to remedy (see A/HRC/15/37, para. 34).

42. In the past, there have been some positive experiences with respect to corporations applying international norms that are favourable to indigenous peoples and respecting their rights. In his third annual report, the Special Rapporteur noted that various corporate social responsibility initiatives by civil society or by the corporate sector ... included specific standards concerning respect for and promotion of indigenous rights (see A/HRC/15/37, para. 42). He further indicated that according to the information gathered by the Special Representative of the Secretary-General, the corporate social responsibility policies of individual private companies, especially the extractive industries, included broader commitments to indigenous communities than to other social sectors (ibid., para. 43).

## Case studies of corporate good practices and indigenous peoples

43. The recognition by the Russian Federation of the status of the small-numbered indigenous peoples of the Russian North, Siberia and the Far East has facilitated efforts to improve their situation. In a number of such regions, including the Khanty-Mansiysk Autonomous Region and the Yamal-Nenets Autonomous Region, radical changes are occurring in traditional sectors of the economy. The statutes of these regions provide for representation of the small-numbered peoples in executive and legislative bodies. In these bodies, there is now growing experience and knowledge regarding indigenous peoples' social partnership with industrial companies as well as State regulation of relations between industries and indigenous landowners. According to studies prepared by indigenous organizations, two Russian companies (Novatek, which produces and treats gas in the Yamal-Nenets Autonomous Region and Terneiles, which logs and converts timber in the Primorskiy krai area) are currently working in conformity with international standards on human rights and the rights of indigenous peoples. Both companies have been awarded the Vitus Bering International Award for "Best Industrial Company" for their observance of indigenous rights.

44. In the field of forestry, a noteworthy case study published by the Bolivian Institute of Foreign Trade and the Swiss State Secretariat for Economic Affairs refers to the relationship between a logging company called La Chonta Wood Ltd. and the Guarayo indigenous peoples of the Plurinational State of Bolivia. The company has logging concessions in lands inhabited by the Guarayo peoples. The Guarayos presented their territorial demands to the Government of the Plurinational State of Bolivia through the Group of Guarayo Peoples' Organizations, and demanded recognition of 2.2 million hectares that included several forestry concessions, among them La Chonta Wood Ltd. The Guarayo territories included 1.7 million hectares classified under the "original communal lands" category in which there are forestry concessions. The company reached agreement with indigenous communities on the use of the road that leads to the La Chonta sawmill, which is also vital to the development of the management plans of the Guarayos of the Urubichá, Salvatierra and Cururú communities. It also provided support for local indigenous craftsmanship and the manufacture of violins by supplying dry wood as input material, thus fostering local culture and income generation for indigenous artisans. In addition, it provided support for entrepreneurial development, thereby increasing interest in forestry and forest grazing activities. The company signed

agreements with the Group of Guarayo Peoples' Organizations, which is the highest indigenous authority in the region, and with the communal centre of Urubichá on support and good-neighbour programmes, such as the forest protection and sustainable development programme.

45. Another good practice concerns the Maricunga gold mine of the Kinross Gold Corporation in Chile.[8] This case study reflects the relationship between the Colla indigenous peoples and Kinross Gold Corporation, which adheres to the principles of the United Nations Global Compact and has developed policies on indigenous peoples and human rights and on climate change. The relationship with the Colla indigenous peoples, who have legal rights over the lands that surround the Kinross Gold Maricunga mine, focused on the corporation's formal commitment to conflict resolution and agreements. This commitment is associated with the recognition of the rights of the Colla indigenous peoples and the ratification of ILO Convention No. 169. The corporation's corporate social responsibility framework centres on the Colla peoples who live near the Jonquera River. There were many discussions and negotiations regarding the highway leading to the mine, which passes near the homes of the Colla peoples and their areas of agricultural activity; conditions, maintenance and environmental effects; and the Colla peoples' access to water. Other topics of interest included education, employment, health, the environment and activities that foster the capacities of the Colla communities. Based on corporate responsibility principles, the corporation is committed to respecting the cultural and historical rights of indigenous peoples affected by Kinross Gold activities and to helping indigenous communities to become economically self-sufficient. It supports the Colla peoples through agricultural business activities; the construction of a 50,000 litre dam and irrigation pool; improved educational opportunities for Colla youth by awarding scholarships; the provision of financial and in kind services to indigenous communities; support for land surveying undertaken by the Government of Chile for legalization purposes; the provision of training on new methods of animal husbandry; and support for the traditional medicine of the Colla peoples.

46. This case study concerns the resolution mechanism for the conflict between the Shuar Federation of Zamora-Chinchipe in the province of Zamora in the Ecuadorian Amazon and the "El Mirador" mining project owned by the Canadian company EcuaCorriente. Mining activities in Ecuador, such as oil mining, have often resulted in the contamination of the environment, water and soil, fed the country's network of corruption and generated violent incidents between those who defend mining interests and those who defend the environment and indigenous communities.[9] The indigenous movement opposed mining activities and mega-projects because of their negative impact and proposed that large-scale mining in Ecuador should be suspended. Nevertheless, there were local indigenous groups that supported mining projects that were committed to responsible mining activities. The conflict was over territories as well as economic, political and environmental issues that involved State policies, indigenous peoples, corporate interests, the

[8] Kernaghan Webb, "Corporate Social Responsibility and the Kinross Maricunga Gold Mine in Chile: A case study on multi-perspective collaboration", available from http://www.ryerson.ca/csrinstitute/current_projects/kinross-maricunga-case-study-spanish-translation-final-2010.pdf.

[9] Roberto Morales et al. (2010), "Indigenous peoples, natural resources and multinational companies: Towards a responsible coexistence"; Study cases: Mapuche Williche Peoples of Chiloé (Chile), Shuar Peoples of the Province of Zamora (Ecuador) and Indigenous Communities (Canada).

interests and agenda of national and international cooperation agencies and the media. The leadership of the Shuar Federation of Zamora-Chinchipe indicated that there was no reason not to engage in dialogue with the corporation and favoured establishing relations based on mutual respect, transparency and mutually agreed topics related to the mining project. The debate centred on the conflict between two contrasting cultural perspectives, the Western culture and the Amazon indigenous culture. The indigenous peoples have suffered decades of external pressures, poverty, the environmental degradation of their surroundings and loss of their cultural control. Within this context, the Federation decided to ask the State to lift the suspension on the Mirador mining project in order to enter into direct negotiations with the Canadian corporation to determine the terms upon which to build the relationship for the period of the mining project. The terms were established in a memorandum of understanding signed by the Federation and EcuaCorriente. The Federation's objective was to develop new economic opportunities that would create a significant number of well-paid jobs and in that way help to reduce the pressure on our forests.

# VI. Private sector industries operating on indigenous lands and territories

47. The history of indigenous peoples since the arrival of the first colonizers has been one of exploitation, dispossession and the destruction of their lands, territories, natural resources and ways of life. It has also been one of intimidation and systematic attempts to erase them physically and culturally. Despite current progress in the recognition of indigenous peoples' rights in the international arena and at the national level, and despite the increase in goodwill on the part of certain corporations, there are still negative situations where the rights of indigenous peoples are disrespected, violated and infringed upon. In most cases, extractive activities in indigenous territories operate under the same discriminatory rules that violate human rights and the rights of indigenous peoples. This situation generates conflicts and exacerbates the situation of the indigenous peoples, who often view corporations as operating with the approval of the Government.

## A. Extractive industries

48. The mining, oil and logging industries have adverse economic, social, cultural and environmental effects on indigenous peoples and affect their territorial rights, resources and ways of life. In Peru, the Government awarded extensive territorial concessions to extractive corporations without acknowledging the rights of the indigenous Awajun and Wampis peoples, applying guaranteed land rights or engaging in processes of consultation and participation. At the end of the 1990s, the "special programme for land titling" titled 164 Awajun and Wampis communities with a communal territory of nearly 1.5 million hectares, 37 per cent of which represented communal titled land. More than 850,000 hectares (38 per cent) of the ancestral Awajun and Wampis territory were confiscated to guarantee the investments of the Hocol Peru Company, to which the Government had granted an exploration contract in Lot 116 towards the end of 2006. Multiple oil and mining concessions partially overlap the communal territories. This situation demonstrates the lack of recognition of indigenous peoples' territorial rights and reveals the need

for a revision of the concession policy that threatens the Awajun and Wampis' right to exist and the sustainability of the Amazon forest.[10]

## B. Agriculture and ethanol industries

49. The biofuel industry is expanding at the expense of the interests of indigenous peoples. This industry requires vast areas of land to grow corn, sugar cane or oil palm to produce ethanol and biodiesel. Close to 90 per cent of world trade in palm oil comes from Malaysia and Indonesia. In the last 20 years, production has doubled in Malaysia and tripled in Indonesia, causing tropical forests to disappear. Brazil is the world leader in ethanol production from sugar cane grown in areas traditionally devoted to food production; the country has signed agreements with the United States to supply the fuel as well as technology for its development.[11] The cultivation of oil palm affects indigenous peoples because it contributes to the deforestation of their traditional lands, and they depend entirely on resources from the forests for their survival. In Asian countries, the Governments have given concessions of vast forest areas to logging companies; after these companies deforest the lands, they use them for oil palm farming. The effects of oil palm and sugar cane agriculture on indigenous peoples are considerable and include forced displacements; the loss of their territories, resources and biodiversity in areas that they traditionally occupied; changes to ecosystems; falling levels of food security; and alterations to and loss of cultural resources.

## C. Pharmaceutical and cosmetic industries

50. The traditional knowledge of indigenous peoples takes in a wide range of subjects, including natural sciences (biology, botany, zoology), astronomy, geography, geology and meteorology, natural healing, medicine, pharmacology, ecology, biodiversity management, sustainable development and associated crops, agroforestry, ecosystems management, forestry management, watershed management, current and potential uses of plant and animal species, soil and minerals, and the processing and storage of useful species and diverse ingredient formulations. Bioprospectors and pharmaceutical firms have a great interest in this traditional knowledge, which affords them enormous savings in time and money spent on research. In recent years, this knowledge has become a valued possession for bioprospecting companies, as it increases their chances of finding plants with medicinal active ingredients that can be applied in the pharmaceutical and cosmetic industries. However, the monopolies established over products that have been developed based on traditional knowledge disregard the legitimate right to compensation for its use and the fair and equitable distribution of profits to the indigenous peoples.

[10] See http://bajolalupa.org/15/01_tex.html.

[11] See "The geopolitics of agrofuels" available from http://www.rcci.net/globalizacion/2007/fg703.htm.

### D. Hydroelectric and other mega-projects

51. Colombia is implementing a programme for the recovery of the Meta River, as part of the Initiative for the Integration of the Regional Infrastructure in South America to develop infrastructures that enable the free flow of goods outside the region. The Initiative incorporates 506 projects and a $68 million investment to improve conditions throughout the 12 participating countries in order to facilitate integration into international markets. The environmental impacts of this project will be felt in the Meta River and adjacent areas and will affect 145 indigenous shelters accommodating some 18 different groups. The project will affect 40 per cent of the territory of the Caño Mochuelo shelter. Floods will destroy crops and could cause the disappearance of some of the communities living on the riverbanks. Economically, the privatization of the river will prevent indigenous peoples from using a river that for generations has been a means of nourishment and transportation. However, for the business people involved, the project will promote investments in manufacturing and extractive projects in the area, such as oil and biofuels.

## VII. Conclusions and recommendations

### A. Conclusions

52. In the struggle to ensure the full exercise of their nationally and internationally recognized rights, indigenous peoples are at a serious disadvantage with respect to corporations. This situation shows no signs of significant change in the short term. Corporations do not respect the rights of indigenous peoples, even when these rights are formally recognized by States and policies and norms for corporate social responsibility have been established.

53. Although there is an international legal system that recognizes the rights of indigenous peoples, including to self-determination, autonomy, territory, natural resources and free, prior and informed consent, the national legal systems in most countries with indigenous peoples do not reflect the norms provided for in the international legal system.

54. Indigenous peoples consider to face many gaps and challenges in the exercise of their right to free, prior and informed consent, good faith and participation in decision-making, including in the definition of policies, norms and concession rights for private national or international companies. The application of transparent procedures and mechanisms by States is a determining factor in the recognition of indigenous peoples' fundamental indigenous rights, such as the right to lands and territories, natural resources and biodiversity in the areas they have traditionally occupied, the right to their cultural resources and the right to develop their own culture, way of life and spirituality.

55. Although the principles, policies and norms concerning corporate social responsibility established internationally by States, international financial institutions and corporations represent an advance that could eventually help to achieve the full recognition of and respect for the rights of indigenous peoples, in most cases, they are far from being fulfilled.

56. The successful experiences or good practices of private business enterprises and, in particular, transnational corporations concerning relations with indigenous peoples and their representative organizations are scarce or, at the very best, relatively unknown. However, there are promising cases where the rights of indigenous peoples are now being respected, even when relations initially began with conflicts over the infringement of these rights.

## B. Recommendations

57. Systematize good corporate practices of the business enterprises that operate on indigenous territories.

58. Ensure the participation of indigenous peoples in the preparation of regulatory frameworks and procedures established by States, in accordance with the principle of free, prior and informed consent, in order for corporations to fulfil their responsibilities as set forth in international norms that identify and protect the rights of indigenous peoples, in particular the right to the ownership of their lands and natural resources, which are the sources of their identity, spirituality and material sustenance.

59. Create a mechanism to periodically and systematically assess the impact of programmes and projects implemented by corporations in indigenous lands and territories. The assessments could be extended to include the work of the international financial organizations that provide funding for these projects.

60. Establish a tripartite organization (indigenous peoples, States and corporations) to address and resolve problem situations arising with the companies operating on indigenous lands and territories.

61. Request the Special Rapporteur on the Rights of Indigenous Peoples to include a chapter on the analysis and evaluation of the corporate practices of business enterprises operating on indigenous lands and territories, highlighting both positive and negative aspects, in his annual reports.

62. Formulate a corporate social responsibility code based on international norms to regulate the relationship between corporations and indigenous peoples and provide a framework for their relations, to reduce the potential for conflicts; attain mutual benefits; and ensure respect for the individual and collective rights of indigenous peoples.

63. Ensure that indigenous peoples receive tangible benefits that are proportional to those obtained by the corporations that operate on their lands and territories. At the same time, States should allocate a percentage of the taxes, royalties and privileges they receive from companies to programmes that directly benefit indigenous peoples.

64. Consider the establishment of a trust financed with funds from the corporations operating on indigenous lands and territories, to be administered by a United Nations agency with the purpose of compensating for damages caused by those operations.

65. Periodically publish a list of corporations operating on indigenous lands and territories whose practices violate the rights of indigenous peoples.

**66. Establish a ranking of corporations based on the degree to which they fulfil their obligations concerning the rights of indigenous peoples and corporate social responsibility. The ranking of a corporation should be taken into account by entities when financing corporate projects in indigenous lands and territories.**

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